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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 CALIFORNIANS FOR ALTERNATIVES TO
13 TOXICS, a California non-profit corporation
14 and THE ENVIRONMENTAL PROTECTION
INFORMATION CENTER, a California non-
profit corporation

15 Plaintiffs,
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17 v.

18 EVERGREEN PULP, INC.,
19

20 Defendant.
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27
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Case No. C 06 0002 EDL

~~PROPOSED~~ CONSENT DECREE

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- 28 Attorneys for Defendant
EVERGREEN PULP, INC.

1 WHEREAS, on January 2, 2006, Plaintiffs Californians for Alternatives to Toxics and The
 2 Environmental Protection Information Center ("Plaintiffs") filed an action ("the Action") against
 3 Defendant Evergreen Pulp, Inc. ("Evergreen");

4 WHEREAS, in the Action Plaintiffs allege that Evergreen is in violation of particulate
 5 matter and total reduced sulfur (TRS) emissions standards set forth in the Title V Operating Permit
 6 applicable to the smelt dissolving tank and lime kiln at the kraft pulp mill owned and operated by
 7 Evergreen and located on the Samoa Peninsula west of Eureka, California;

8 WHEREAS, Evergreen denies the material allegations of the Complaint, and this Consent
 9 Decree does not constitute an admission of liability by Evergreen; and

10 WHEREAS, the parties have agreed that settlement of the claims alleged in the Complaint
 11 is in the public interest and that entry of this Consent Decree without further litigation is the most
 12 appropriate way to resolve this action;

13 THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

14 **I. JURISDICTION AND PARTIES BOUND**

15 1. This Court has jurisdiction over the subject matter of this action and over the parties
 16 pursuant to section 304 of the Clean Air Act (the "Act"), 42 U.S.C. § 7604, and 28 U.S.C.
 17 §§ 1331, 2201, and 2202.

18 2. Venue is proper in this Court pursuant to section 304 of the Act, 42 U.S.C. § 7604,
 19 and 28 U.S.C. § 1391(b). For purposes of this Consent Decree only and for no other purpose,
 20 Evergreen does not contest (a) the adequacy of Plaintiffs' notice of intent to sue given under 42
 21 U.S.C. § 7604(b), or (b) the standing of Plaintiffs to sue on the claims asserted in the complaint on
 22 file herein.

23 3. This Consent Decree shall, upon entry by the Court, apply to, and be binding upon
 24 the parties and each of their respective directors, successors, and assigns.

25 4. If Evergreen transfers any ownership interest or right to operate the Facility (defined
 26 in Section II of this Consent Decree), including but not limited to the sale, lease, or licensing of
 27 others to operate all or part of the mill, Evergreen shall give notice of this Consent Decree to any
 28 successor in interest before such transfer. Evergreen shall send a copy of such written notification

1 to Plaintiffs before such sale or transfer. Upon sale or transfer of the Facility, Evergreen shall
2 attach a copy of this Consent Decree to the agreement by which the sale or transfer occurs and
3 shall make performance of Evergreen's obligations under this Decree an obligation of any
4 purchaser or transferee.

5 **II. DEFINITIONS**

6 5. "ATC" means an Authority to Construct within the meaning of NCUAQMD Rule
7 200.

8 6. "Effective Date" means the date of entry of the Consent Decree by the Clerk of the
9 United States District Court for the Northern District of California.

10 7. "EPA" means the U.S. Environmental Protection Agency, including Region 9.

11 8. "Facility" means the pulp mill located at 1 TCF Drive, Samoa, California 95564, on
12 the North spit of Humboldt Bay, which Evergreen currently owns and operates.

13 9. "NCUAQMD" means the North Coast Unified Air Quality Management District.

14 10. "PM" means particulate matter.

15 11. "Promptly" means within 10 days of the relevant event.

16 12. "PTO" means a Permit to Operate within the meaning of NCUAQMD Rule 240.

17 13. "Smelt Dissolver" means the 50,000-gallon smelt dissolver tank at the Facility, which
18 is located beneath the recovery boiler.

19 14. "Spray System" means the spray nozzles located upstream of the Wet Scrubber,
20 which were installed in August 2005 to augment control of PM emissions from the Smelt
21 Dissolver.

22 15. "Venturi Scrubber ATC" means the ATC for the venturi scrubber, a device to control
23 emissions from the Smelt Dissolver, which is the subject of the Injunctive Relief section of this
24 Consent Decree.

25 16. "Wet Scrubber" means the existing air pollution control device for the Smelt
26 Dissolver, consisting of a packed bed, spray chamber and demister housed in a stainless steel
27 vessel. For purposes of this Consent Decree, the Wet Scrubber does not include the Spray
28 System.

1 **III. EVERGREEN COMMITMENTS**

2 17. Evergreen shall provide to Plaintiffs a copy of its Alternative Monitoring Plan for the
3 Spray System at the same time that it provides the Alternative Monitoring Plan to EPA.

4 18. By the Effective Date, Evergreen shall create a link on its existing website, for
5 posting of monthly monitoring reports submitted to NCUAQMD pursuant to General Provision F
6 of the Title V Permit to Operate, including all elements of the monthly reports submitted to
7 NCUAQMD (the "Monthly Monitoring Reports"). Evergreen shall thereafter, for a period of 3
8 years, promptly make available on the website the Monthly Monitoring Reports. Evergreen shall
9 promptly provide Plaintiffs notice of the posting of the first Monthly Monitoring Report via the
10 website, together with notice of the URL at which the posted Monthly Monitoring Reports may be
11 found. During the three year period for posting of Monthly Monitoring Reports on the website,
12 Evergreen shall provide prompt notice to Plaintiffs of any change in the URL.

13 19. By December 31, 2007, Evergreen shall submit a complete Venturi Scrubber ATC
14 application to NCUAQMD. The ATC Application shall propose the installation and operation of
15 a Venturi Scrubber designed to meet, at a minimum, the particulate matter emissions standard set
16 forth in the Title V permit for the Smelt Dissolver.

17 20. At the same time Evergreen submits the Venturi Scrubber ATC application to
18 NCUAQMD, Evergreen shall transmit to Plaintiffs' Counsel a complete copy of the application,
19 including any exhibits, enclosures, and forms accompanying the application, and any engineering
20 studies furnished to NCUAQMD (a) supporting the application or (b) addressing the decision to
21 retain, or not, the Wet Scrubber or the Spray System after installation and commencement of
22 operation of a Venturi Scrubber.

23 21. Evergreen shall negotiate in good faith with NCUAQMD on the terms and conditions
24 of the Venturi Scrubber ATC and shall not in bad faith or unreasonably reject any final ATC
25 permit issued by the NCUAQMD.

26 22. Evergreen shall promptly transmit to Plaintiffs' Counsel copies of any written
27 correspondence exchanged between NCUAQMD and Evergreen that constitutes negotiations on
28 the terms and conditions of the Venturi Scrubber ATC.

1 23. Evergreen shall promptly transmit to Plaintiffs' Counsel a copy of any draft and final
2 Venturi Scrubber ATC.

3 24. Evergreen shall promptly notify Plaintiffs of its decision whether to accept the final
4 Venturi Scrubber ATC.

5 25. Should Evergreen accept the final Venturi Scrubber ATC, it will proceed to acquire,
6 install and commence operation of the Venturi Scrubber in accordance with the terms and
7 conditions of the final Venturi Scrubber ATC, provided, however, that in no event shall Evergreen
8 be required by this Consent Decree to construct or install the Venturi Scrubber before May 31,
9 2008. Unless this Consent Decree has been modified to allow a later date, Evergreen shall
10 complete construction, installation and startup of the Venturi Scrubber on or before September 1,
11 2008.

12 26. Nothing herein shall impair Evergreen's right to appeal the final Venturi Scrubber
13 ACT to the NCUAQMD Hearing Board in accordance with the NCUAQMD Rules and
14 Regulations. The time periods set forth in Paragraph 25 shall be tolled automatically during the
15 period commencing with Evergreen's initiation of an appeal and ending with the entry of the
16 Hearing Board's order on the appeal. Should Evergreen appeal the final Venturi Scrubber ATC, it
17 shall serve Plaintiffs with copies of its appeal papers promptly after filing with the Hearing Board.

18 27. If Evergreen rejects the final Venturi Scrubber ATC, it shall promptly notify
19 Plaintiffs and provide (a) a statement of the reasons for such rejection, and (b) a copy of all
20 documents on which Evergreen relies in rejecting the ATC; provided, however, that Evergreen
21 shall not be required to provide a copy of privileged documents or attorney work product, and
22 nothing in this paragraph shall affect Evergreen's right to present additional analyses, studies,
23 briefs or other materials, or, after such production to Plaintiffs, to identify and use additional
24 documents on which it may rely.

25 28. Within 30 days of Evergreen's notification to Plaintiffs pursuant to Paragraph 27,
26 Plaintiffs, if they so elect, shall notify Evergreen that one or both Plaintiffs will invoke the dispute
27 resolution process set forth in Paragraphs 30 and 31 to challenge Evergreen's decision not to
28 accept the final Venturi Scrubber ATC. Should Evergreen appeal the final Venturi Scrubber

1 ATC, dispute resolution proceedings shall commence after entry of the Hearing Board's order on
2 the appeal. In any dispute resolution proceedings invoked pursuant to this paragraph, the issue to
3 be resolved shall be whether Evergreen's decision to reject the final Venturi Scrubber ATC was
4 reasonable and made in good faith. In such proceedings Evergreen shall bear the burden of proof
5 by a preponderance of the evidence that its rejection of the final Venturi Scrubber ATC was
6 reasonable and in good faith. Should dispute resolution proceedings include submission of the
7 dispute to the Court for resolution, and should the Court determine that Evergreen's decision to
8 reject the final Venturi Scrubber ATC was unreasonable and in bad faith, Evergreen shall, within
9 30 days of the Court's decision, notify NCAQMD of its intent to accept the final Venturi Scrubber
10 ATC, and shall, within 90 days of the Court's decision, install and commence operation of the
11 Venturi Scrubber in accordance with the final Venturi Scrubber ATC within 90 days of receipt of
12 the Court's decision. Should the Court determine that Evergreen's decision to reject the final
13 Venturi Scrubber ATC was not unreasonable and in bad faith, then Evergreen shall have no
14 further obligations under this Consent Decree to design, acquire, install or operate a Venturi
15 Scrubber. Plaintiffs reserve the right to request that the court grant them discovery in connection
16 with dispute resolution proceedings, and Evergreen reserves the right to oppose such a request.

17 **IV. TIME ADJUSTMENTS**

18 29. Should the parties be unable to stipulate to non-automatic adjustments of time
19 required for compliance with this Consent Decree requested by Evergreen, Evergreen may apply
20 to the Court for an extension of time to perform any of the obligations required of it in this
21 Consent Decree. The Court shall adjust the time requirements set forth in this Consent Decree
22 upon a showing of good cause.

23 **V. DISPUTE RESOLUTION**

24 30. Where dispute resolution is provided for in this Consent Decree, the party seeking to
25 invoke the dispute resolution process shall send a notice to the other party outlining the nature of
26 the dispute, with a reference to the paragraph number in the Decree providing for dispute
27 resolution, and requesting informal negotiations to resolve the dispute. Such period of informal
28 negotiations shall not extend beyond 30 days from the date of the notice, unless an appeal by

1 Evergreen of the final Venturi Scrubber ATC is pending, or the parties agree otherwise in writing.
 2 For any such informal negotiations, any party may elect to seek dispute resolution assistance from
 3 Magistrate Judge Wayne Brazil, who has agreed to be available for these purposes. Should Judge
 4 Brazil's assistance be requested by either party and should he be available, the parties will
 5 participate in mediation of the dispute in accordance with instructions and procedures Judge Brazil
 6 may establish.

7 31. If informal negotiations or mediation are unsuccessful, either party may file a motion
 8 with this Court for dispute resolution. Except in the event of tolling during an appeal to the
 9 NCUAQMD Hearing Board, any such motion must be filed within 20 days after receipt by such
 10 party of a notice in writing terminating informal negotiations or, in the event mediation has taken
 11 place, within 20 days of the date of receipt of notice in writing terminating the mediation. The
 12 opposing party shall respond in accordance with the motion procedures and timetables established
 13 by local rules, and the moving party may reply in accordance with the local rules.

14 VI. NOTIFICATION

15 32. Where notification is to be provided to Plaintiffs, notification shall be in writing, and
 16 shall deemed to have been made when provided to Plaintiffs' Counsel. All notices and
 17 submissions required by this Decree shall be sent by electronic mail, which shall be deemed notice
 18 in writing. In lieu of electronic mail, any party may, at its discretion, provide written notice in
 19 hard copy by certified U.S. Mail, return receipt requested, by overnight courier, or by hand
 20 delivery. Notices shall be directed as follows:

21 Where Notification/Submission to Plaintiffs Is Required:

22 William Verick
 23 Klamath Environmental Law Center
 24 424 First Street
 Eureka, California 95501-0404
 E-Mail: wverick@igc.org

25 Sharon E. Duggan
 26 Law Offices of Sharon E. Duggan
 27 370 Grand Avenue, Suite 5
 Oakland, California 94610-4874
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4 536 Mission Street
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6 Phone: (415) 442-6647, Fax: (415) 896-2450
7 E-Mail: hkang@ggu.edu

8 Where Notification to Evergreen Is Required:

9 David Tsang
10 Chief Executive Officer
11 Evergreen Pulp, Inc.
12 1 TCF Drive
13 Samoa, CA 95564
14 DavidTsang@evergreenpulp.com

15 Carol Romero
16 Manager, Environment and Safety
17 Evergreen Pulp, Inc.
18 1 TCF Drive
19 Samoa, CA 95564
20 CarolRomero@EvergreenPulp.com

21 David Cooke
22 Allen Matkins Leck Gamble Mallory & Natsis LLP
23 Three Embarcadero Center, 12th Floor
24 San Francisco, CA 94111
25 dcooke@allenmatkins.com

26 **VII. MISCELLANEOUS**

27 33. Within 10 days of the Effective Date, Evergreen shall pay Plaintiffs \$310,000, in full
28 settlement of their claim for attorneys' fees and costs (including experts' and consultants' fees and
costs), by delivering to William Verick, Plaintiffs' counsel, at the address listed in Paragraph 32, a
check in that amount made payable to Klamath Environmental Law Center.

34. Entry of this Consent Decree and compliance with its requirements shall constitute
complete and final resolution, settlement and satisfaction of Plaintiffs' claims against Evergreen as
alleged in the Complaint to the Effective Date. Evergreen releases and discharges each Plaintiff,
its officers, directors, employees, and its attorneys from any and all claims relating to the
Complaint that may have accrued as of the Effective Date.

1 35. This Consent Decree contains the entire agreement between the parties. This
2 Consent Decree may not be enlarged, modified, or altered unless such modifications are made in
3 writing and approved by the parties and the Court.

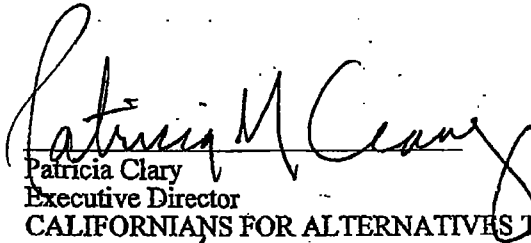
4 36. The Court may close this case administratively after it enters this Consent Decree,
5 but the Court shall retain jurisdiction to enforce and to resolve any disputes that arise under this
6 Consent Decree.

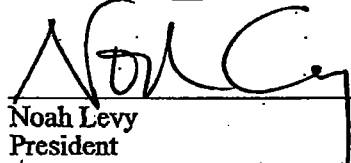
7 37. This Consent Decree shall terminate after Evergreen has completed all of its
8 obligations hereunder. Following completion of its obligations hereunder, Evergreen may give
9 Notice of Termination of this Decree by filing such notice with the Court. The Consent Decree
10 shall be deemed to be terminated automatically without further action by the Court on the 20th day
11 following such filing of Notice of Termination, unless Plaintiffs file a motion before the expiration
12 of that 20 day period, objecting to the Notice of Termination. The parties may brief the Court on
13 the issue whether the Decree has terminated in accordance with the motion procedures of the
14 Court's Civil Local Rules.

15 38. The parties acknowledge that this Consent Decree may not be entered by the Court
16 until 45 days after it is received by the United States Attorney General and the Administrator of
17 the United States Environmental Protection Agency pursuant to section 304(c)(3) of the Act, 42
18 U.S.C. § 7604(c)(3). Plaintiffs shall promptly undertake such service after this Consent Decree is
19 executed by the parties. Should the Department of Justice ("Department") or the EPA notify
20 either party or the Court that it rejects or opposes entry of this Decree, this Decree shall not be
21 entered automatically, but either party may move for an order entering this Decree as the
22 judgment of the Court over such objections, and either party may, in good faith, oppose such a
23 motion based upon the reasons provided by the Department or the EPA for its/their rejection or
24 opposition to entry of this Decree. Should the Department or the EPA not notify either party or
25 the Court that it rejects or opposes entry of this Decree within the 45 day period, any party to this
26 Consent Decree may thereafter file an unopposed request that the Court enter this Consent Decree.


27 39. Upon entry by this Court, this Consent Decree shall constitute a final judgment for
28 purposes of Fed. R. Civ. Proc. 54 and 58.

1 IT IS SO AGREED by Plaintiffs:

2 
3 Patricia Clary
4 Executive Director
5 CALIFORNIANS FOR ALTERNATIVES TO TOXICS
6 Dated: March 6, 2007

7 
8 Noah Levy
9 President
10 THE ENVIRONMENTAL PROTECTION
11 INFORMATION CENTER
12 Dated: March 6, 2007

13 IT IS SO AGREED by Defendant:

14 
15 David Tsang
16 President/CEO
17 Evergreen Pulp, Inc.
18 Dated: March 6, 2007

19 IT IS SO ORDERED this 1st day of May 2007.



21 HON. ELIZABETH D. LAPORTE
22 United States Magistrate Judge
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